BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.	I.12-10-013 (Filed October 25, 2012)
And Related Matters.	Application 13-01-016 (Filed January 31, 2013) Application 13-03-005 (Filed March 15, 2013) Application 13-03-013 (Filed March 19, 2013) Application 13-03-014 (Filed March 18, 2013)

PROPOSAL OF THE UTILITY REFORM NETWORK FOR MOVING FORWARD WITH THE INVESTIGATION

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Pursuant to the May 26, 2017 Administrative Law Judge Ruling Granting Motion of the Meet and Confer Parties to Extend the Dates for the All-Party Meet and Confer (*hereafter* "Ruling"), The Utility Reform Network (TURN) hereby submits this proposal for moving forward with the investigation. The Ruling requests that parties address the results of the meet and confer sessions and include "both procedural and substantive recommendations for how to proceed with resolving the pending petitions to modify Decision 14-11-040."[1]

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

TURN has participated faithfully in the meet-and-confer process by attending a large number meetings held both in-person and by telephone. Throughout the process, TURN sought to work with all parties to reach an agreement that would resolve the remaining disputes in this proceeding. Although meaningful progress has been made and all parties diligently engaged in the process, there is no agreement at this time. To preserve the confidentiality of the mediation process, TURN will not offer any additional details or attempt to characterize the extent of the gap between the positions of various parties.

Since no agreement has been reached at this time, TURN offers several recommendations for proceeding with the investigation:

(1) The Commission should immediately suspend the authority of Southern California Edison and San Diego Gas & Electric to recover any portion of the remaining SONGS regulatory asset in customer rates. Any additional collections should be deferred until the

[1] May 26 ruling, page 6.

resolution of the remaining issues in the case.

(2) The Commission should set aside the previously adopted settlement, place the long-delayed Phase 1 Proposed Decision on the agenda for an upcoming Commission meeting, draft a Phase 2 Proposed Decision based on the record already developed in the case, and initiate a Phase 3 to determine the appropriate shareholder consequences for the failure of the Steam Generator project.

(3) If the Commission does not wish to adopt the recommendations in (2), specific modifications to the previously adopted settlement should be considered. TURN provides a list of potential modifications in this pleading.

TURN explains the basis for these recommendations in greater detail in the following sections.

II. RELEVANCE OF NEW DEVELOPMENTS SINCE THE ADOPTION OF THE ORIGINAL SETTLEMENT AGREEMENT

New developments since the negotiation, submission, and adoption of the original settlement have changed the course of this Investigation. These developments include the revelations about a series of unreported *ex parte* meetings between SCE management and former CPUC President Peevey, the release of a handwritten note from one such meeting, the commencement of investigations by the state Attorney General and US Department of Justice, expressions of concern by leaders in the state Legislature, and sustained media coverage critical of the Commission's handling of the case. Two of the consumer signatories to the original settlement, TURN and the Office of Ratepayer Advocates, have rescinded their support for the original agreement and urged

the Commission to make significant changes that would benefit ratepayers.

The Commission has responded to these developments by penalizing SCE and reopening the proceeding with a presumption that changes must be made that provide significant benefits to ratepayers. Since those penalties, the arbitration between SCE and Mitsubishi Heavy Industries (MHI) has concluded and sheds new light on the circumstances under which SCE decided to prematurely retire the plant.

A. *Ex Parte Disclosures, Penalties and Reopening of the Proceeding*

After the original settlement was approved by the CPUC in D.14-11-020, a series of disclosures revealed a string of unreported *ex parte* communications between former President Michael Peevey and SCE executives regarding the potential resolution of SONGS shutdown costs. These *ex parte* communications included a private meeting overseas, a handwritten note detailing potential settlement terms, and many other conversations between several key SCE executives and former CPUC President Peevey. At a minimum, these late disclosures created the perception that the settlement process was fundamentally and irreparably tainted. These disclosures further undermine the credibility of SCE's representations to the other settling parties and the basis for their original motivation to enter into settlement negotiations.

In D.15-12-016 the Commission penalized SCE $16.74 million for failing to disclose *ex parte* communications relevant to the Investigation. In the Decision, the Commission noted that the failure to disclose such contacts "meant that other parties lacked the knowledge, however logical, that former President Peevey and some at SCE had begun to consider permanent shutdown and what costs might be allocated by a settlement."[2] The entire amount was deposited into the state

[2] D.15-12-016, page 41

General Fund where it can be used to support California budget obligations.[3] Since none of these penalty funds went to ratepayers of SCE and SDG&E, the violations did not reduce the obligations of ratepayers to cover a variety of costs outlined in the settlement.

The Assigned Commissioner and Administrative Law Judge subsequently issued a ruling reopening the record of the proceeding in light of both the findings of D.15-12-016 and petitions for modification filed by the Alliance for Nuclear Responsibility (A4NR) and the Office of Ratepayer Advocates (ORA). In the ruling, the Commission asked parties to comment on whether the original settlement remains "reasonable in light of the record, consistent with the law, and in the public interest."[4] The ruling also requested recommendations for further procedural steps that are warranted.

In comments that followed the ruling, no parties to the original settlement supported a finding that the original settlement should be deemed reasonable as adopted. Many parties argued that the timely disclosure of these private communications could have yielded a material impact on settlement negotiations and outcomes. For example, TURN and ORA (the main consumer parties negotiating the agreement) may have chosen to abandon settlement negotiations and left outstanding issues to be litigated. Most non-utility parties favored reopening the case and resolving all disputed issues through a litigated outcome.

B. December 2016 Ruling

After reviewing the comments of parties in response to the May 9, 2016 ruling, the Assigned Commissioner and Administrative Law Judge issued a second

[3] D.15-12-016, Ordering Paragraph 1.
[4] Joint Ruling of Assigned Commissioner and Administrative Law Judge, May 9, 2016, I.12-10-013, page 5.

ruling on December 13, 2016.[5] Relying upon the findings and conclusions of D.15-12-016, the ruling directs parties to engage in the ongoing meet-and-confer process and consider modifications to the previously adopted settlement. The ruling offered a number of significant findings such as:

- the unreported *ex parte* communications "created information asymmetry that could directly benefit Edison and its shareholders" and therefore raises "serious doubt" as to whether the agreement resulted from a "good faith negotiation process."[6] This failure "disadvantaged ratepayer advocates in negotiation and assessment of litigation option, which in turn, harmed ratepayers."[7]

- the belated disclosure of the *ex parte* communications constitutes "new acts or circumstances which create a strong expectation that we would have made a different decision in a prior order."[8]

- the $16.7 million in penalties levied upon SCE in D.15-12-016 does not foreclose the Commission from modifying the prior settlement to reflect harms to ratepayers resulting from these breaches.[9]

- modifications to the outcomes adopted in D.14-11-040 should "address any disadvantages suffered by ratepayers as a result of Edison's actions" so long as none of the changes "impair ratepayers' current position."[10]

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[5] Joint Ruling of Assigned Commissioner and Administrative Law Judge, December 13, 2016, I.12-10-013.
[6] *Ibid*, page 32.
[7] *Ibid*, page 33.
[8] *Ibid*, page 34.
[9] *Ibid*, page 30.
[10] *Ibid*, page 33.

• any assessment of "the reasonableness of any proposed settlement is not the parties' former litigation positions; the benchmark today is the Agreement as implemented and quantification of the loss suffered by ratepayers as a result of Edison's unlawful actions."[11]

The ruling goes on to suggest that the meet-and-confer process consider a series of potential modifications identified by ORA, TURN and A4NR.[12] These modifications encompass a wide range of shifts in cost responsibility that range from tens of millions to billions of dollars. The ruling embraces the key principle that any modifications should accrue entirely to the benefit of ratepayers.

If the parties are unable to reach an acceptable agreement through the meet-and-confer process, the Ruling states that the Commission will "carefully consider all of its options" relating to the reopening of the proceeding.[13] The ruling identifies the potential for additional testimony, hearings and briefing on the disputed issues. Since the meet-and-confer process has not yet yielded a negotiated outcome, it is now time for the Commission to "carefully consider" the next steps forward.

C. *Mitsubishi Arbitration Decision*

On March 10, 2017, an International Chamber of Commerce arbitration panel issued a decision resolving claims made by both the SONGS co-owners and Mitsubishi. The arbitration decision orders Mitsubishi to pay the SONGS co-owners $125 million relating to breach of contract but deducts over $58 million for 95% of the legal costs incurred by Mitsubishi and 95% of the costs of the

[11] *Ibid*, page 35.
[12] *Ibid*, page 38.
[13] *Ibid*, page 40.

arbitration.[14] The remaining net proceeds are awarded to the three SONGS co-owners (SCE - $45.5 million, SDG&E - $11.6 million, Riverside - $1 million).[15]

Under the adopted settlement, both SCE and SDG&E are entitled to deduct their litigation costs from any award and distribute 50% of the remainder to customers.[16] After deducting more than $84 million in legal costs from both the current award and another $35 million received from Mitsubishi in 2014, there appears to be practically no remaining balance to pass through to ratepayers.

A review of the arbitration decision reveals several facts that suggest SCE should be subject to additional liability based on its own choices in dealings with Mitsubishi, the decision to retire SONGS, and the initiation of settlement negotiations. Relevant takeaways include the following:

- SCE selected a vendor with no track record of designing and fabricating steam generators of the size needed for SONGS.[17]

- SCE knowingly traded a lower contractual warranty for a lower purchase price. This decision proved fateful when this contractual limitation prevented SCE from holding Mitsubishi responsible for the destruction of billions of dollars of value at SONGS due to the defective RSG design.[18]

- SCE rejected viable repair options offered by Mitsubishi and made strategic choices during the shutdown (including the decision to permanently retire SONGS) primarily geared to the development of

[14] Final ICC SONGS arbitration award, March 10, 2017, page 1083.
[15] Final ICC SONGS arbitration award, page 1083.
[16] Amended SONGS settlement, Section 4.11.
[17] Final ICC SONGS arbitration award, pages 97-98.
[18] Final ICC SONGS arbitration award, pages 932-933.

stronger litigation positions for purposes of the forthcoming arbitration.[19] The arbitration tribunal appears to place significant weight on this finding in reaching its overall conclusions.

• SCE had highly unrealistic expectations regarding their ability to invalidate the liability and warranty limits in the contract and recover damages from Mitsubishi. Their failure to prevail on these points in the arbitration demonstrates the unreasonableness of their expectations.

• SCE was emboldened to opt for shutdown after the unreported *ex parte* meeting between Stephen Pickett and former CPUC President Peevey in March of 2013 at which possible cost recovery terms under a permanent retirement scenario were discussed.[20]

• SCE appeared to be worried that shareholders could be exposed to greater financial risk if efforts to restart SONGS continued while ratepayers could pick up most of the costs if the plant was permanently retired.[21]

In short, the ability of SCE to recover costs from Mitsubishi through arbitration appears to have been fatally undermined by their strategic choices regarding the warranty provisions of the original contract, the rejection of proposed repair options, the abandonment of efforts to repair the plant, and the decision to permanently retire SONGS in mid-2013. Moreover, the Picket-Peevey meeting

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[19] Final ICC SONGS arbitration award, pages 222, 628, 656, 660, 806, 926. For example, paragraph 1860 states "SCE's warranty and screening criteria appear to have been attempts to force MHI into a replacement recommendation, which SCE used to declare MHI in breach of contract, overturn the contractually negotiated limitation of liability provision, and establish a strong bargaining or litigation position for the resolution of the SONGS Incident."

[20] Final ICC SONGS arbitration award, pages 259-260.

[21] Final ICC SONGS arbitration award, pages 193, 251-252.

may have emboldened SCE to pursue an early permanent retirement based on an expectation that most costs would not be assigned to shareholders. Finally, SCE's extreme monetary demands in the arbitration and inability to demonstrate gross negligence or fraud by Mitsubishi led to the low recovery and created over $130 million in avoidable legal costs that served to enrich top-flight law firms and expert witnesses without producing any benefit for ratepayers.

SCE's cumulative actions over this period led to a situation where the utility was left with no meaningful recourse against an underperforming vendor and faced only two entities to pay for the RSG fiasco - shareholders or ratepayers. SCE management appeared to conclude, in part due to unreported *ex parte* communications with former CPUC President Peevey, that premature shutdown and litigation against Mitsubishi represented the lowest risk outcome for shareholders. Unfortunately, this approach also appears to have produced the highest cost outcomes for ratepayers.

III. THE COMMISSION SHOULD DIRECT BOTH UTILITIES TO CEASE COLLECTIONS OF ANY FURTHER COSTS ASSOCIATED WITH THE REGULATORY ASSET UNTIL THE REMAINING DISPUTES ARE RESOLVED

Absent a new settlement agreement under the meet-and-confer process, the delays associated with litigating the remaining issues in this Investigation are likely to prevent ratepayers from receiving any rate relief for an extended period of time. Rather than waiting for years to pass before ratepayers can realize any benefits, and recognizing the importance of preventing utility shareholders from receiving near-term unjust enrichment, the Commission should take immediate steps to suspend rate collections pending a final resolution of all remaining disputes.

Both SCE and SDG&E are currently benefiting from significant annual revenues paid by customers that are applied towards the remaining costs authorized under the original settlement. These costs include base plant, Construction Work in Progress, and Nuclear fuel, and are encompassed within the SONGS regulatory asset. In 2017, SCE is authorized to recover $237 million, most of which is applied towards the $860 million regulatory asset (amount remaining as of January 1, 2017).[22] SDG&E is authorized to recover $38 million in rates, most of which is applied towards the $174 million regulatory asset (amount remaining as of January 1, 2017).[23]

In order to preserve the position of ratepayers and prevent shareholders from receiving unfair near-term benefits during the course of litigation, the Commission should suspend the authority of both utilities to collect any additional funds from ratepayers. The suspension should occur at the earliest possible date. TURN recommends that Assigned Commissioner and ALJ direct the utilities to suspend collections as of August 30, 2017. The disposition of the remaining balance of the SONGS regulatory asset would be deferred until the resolution of all disputed issues in the proceeding. To the extent that the liability of SCE and SDG&E shareholders exceeds the remaining balance of the regulatory asset, no further collections would be permitted and an additional credit would be provided to customers.

IV. TURN RECOMMENDS THAT THE COMMISSION RESOLVE ALL DISPUTED ISSUES THROUGH LITIGATION

As explained in prior filings, TURN believes that the most direct and transparent way to restore public confidence and ensure a transparent resolution is to fully reopen the proceeding, set aside the settlement, and determine the allocation of

[22] SCE Advice Letter 3499-E.
[23] SDG&E Advice Letter 2989-E.

SONGS-related costs based exclusively on testimony, evidentiary hearings and briefs. The Commission can and should move promptly to resolve contested issues of fact and law in order to bring closure to a proceeding that began almost five years ago.

Much of the evidentiary record has already been developed through Phase 1, Phase 1A and Phase 2. Moreover, the Commission has already issued a proposed decision in Phase 1/1A that was scheduled to have been approved at the December 19, 2013 business meeting but instead was repeatedly held from the agenda at the request of former President Peevey.[24] The Phase 1/1A proposed decision is the result of extensive testimony, cross-examination during two rounds of evidentiary hearings, and briefing by all interested parties. The adoption of that proposed decision would resolve the reasonableness of 2012 SONGS costs and the methodology for calculating replacement power costs.

With respect to Phase 2, the Commission can proceed to issue a proposed decision based on the prepared testimony, evidentiary hearings and full briefing already done by active parties. Though the testimony, hearings and briefing in both phases occurred in 2013, the facts and the law have not changed since that time. The existing record provides a sufficient basis to support the adoption of final decisions in these two phases.

While a Phase 2 decision is being prepared, the Commission should initiate Phase 3 and establish a schedule for testimony, hearings, briefing and the issuance of a proposed decision. The purpose of Phase 3 should be to examine

[24] The Phase 1 Proposed Decision of ALJs Darling and Dudney was originally mailed on November 19, 2013. President Peevey placed a hold on the Phase 1 decision to prevent a vote at both the December 19, 2013 and January 15, 2014 meetings. The Proposed Decision was held by "staff" at the February 27, 2014 meeting and by Commissioner Picker at the March 27, 2014 meeting. By the time the settlement was filed in April of 2014, the Phase 1 Proposed Decision had been held on four separate occasions.

the liability of SCE and SDG&E for the defective steam generators including any additional disallowances for costs identified in Phase 1/1A and Phase 2 that should be disallowed due to the failure of the steam generator replacement project.[25]

Under this approach, the Commission would be able to rely upon an evidentiary record, applicable legal precedents (including those that have been adopted since the initiation of this OII), and full opportunities for participation by all active parties. TURN believes that this approach would instill confidence in the outcome and allow all parties a chance to offer comprehensive proposals for the resolution of all contested issues.

V. IF THE COMMISSION DOES NOT WISH TO RESOLVE ALL DISPUTED ISSUES VIA LITIGATION, SPECIFIC MODIFICATIONS TO THE PREVIOUSLY ADOPTED SETTLEMENT SHOULD BE CONSIDERED

If the Commission does not set aside the settlement and seek complete litigation of all disputed issues, TURN recommends that the next phase of the Investigation consider potential modifications. In prior filings, TURN identified a series of potential changes that could modify the previously adopted settlement to satisfy the public interest and provide significant benefits to ratepayers. The range of modifications to be considered should include all of the following:

- Disallow recovery of 50% or more of base plant to reflect the fact that the premature retirement of the San Onofre Nuclear Generating Station

[25] Consistent with past precedents, the Commission could conclude that the consequences of imprudence include the prematurely shutdown plant, lost revenues that would have resulted from the sale of energy from the facility, an increase in overall market energy costs due to the unexpected plant closure, costs of increased Greenhouse Gas emissions, and an array of other harms to customers. These consequences could form the basis for credits to ratepayers that approximate the total cumulative harms attributable to imprudent management of the RSG project.

(SONGS) was attributable to imprudence. The December 13, 2016 Ruling identifies the treatment of base plant and potential disallowances as an issue that should be considered in the course of the meet and confer process.[26]

• Direct SCE and SDG&E to refund costs related to the Replacement Steam Generators (RSGs) collected in rates prior to February of 2012. Pursuant to D.05-12-040 and D.06-11-026, these RSG costs were subject to refund in the event that a reasonableness review is performed.[27] These refunds are justified to prevent ratepayers from being billed for incremental costs associated with the RSGs. Had the RSGs not been purchased and installed, SONGS would likely have operated with its original steam generators until at least January of 2012.[28] Therefore, the Commission can conclude that all RSG costs are incremental to what would have been expended if the project had never proceeded. The December 13, 2016 CPUC ruling identifies the refund of all previously collected RSG costs as an issue that should be considered in the course of the meet and confer process.[29]

• Permit no rate of return on any base plant eligible for recovery in customer rates. The adopted settlement provides for the recovery of base plant (not including the RSGs) over 10 years including a full rate of return on debt, 50% of the authorized return for preferred stock, and no return on shareholder equity. This approach results in a current overall rate of

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[26] Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge, December 13, 2016, I.12-10-013, page 38.
[27] D.05-12-040, Ordering Paragraphs 9 and 10.
[28] The Commission previously found that the original Unit 2 and 3 steam generators would likely have allowed the plant to continue operating until at least 2012 (D.05-12-040, page 30).
[29] Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge, December 13, 2016, I.12-10-013, page 38.

return of 2.62% for SCE and 2.35% for SDG&E.[30] This level of return represented a compromise relative to the litigation positions taken by TURN and ORA. TURN had recommended no return on equity or debt with amortization occurring over the remaining license life (approximately 10 years). The December 13, 2016 CPUC ruling identifies refunds of any return on base plant as an issue that should be considered in the course of the meet and confer process.[31]

• Approve an additional $86.95 million in refunds relating to unreasonable 2012 expenses incurred at SONGS consistent with the Phase 1 Proposed Decision.[32] The PD would have assigned $71 million of the refunds to SCE and another $16 million to SDG&E.[33] Although the Phase 1 PD was on the Commission's agenda beginning in December of 2013, former CPUC President Peevey repeatedly intervened to hold the decision from coming to a vote.[34]

• Direct SCE and SDG&E to provide refunds for the foregone sales revenues associated with SONGS between February 2012 and June of 2013. The use of a "foregone sales" methodology is consistent with the findings in the Phase 1 Proposed Decision that former President Peevey repeatedly held to prevent a full Commission vote.[35]

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[30] SCE response to Joint Ruling, page 8. SDG&E Advice Letter 2672-E, page 4.
[31] Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge, December 13, 2016, I.12-10-013, page 38.
[32] Proposed Decision of ALJs Darling and Dudney on Phase 1 Regarding 2012 SONGS-related Expenses and Expenditures, I.12-10-013, Mailed November 19, 2013.
[33] Ibid, Ordering Paragraphs 1 and 2.
[34] See footnote 24.
[35] Proposed Decision of ALJs Darling and Dudney on Phase 1 Regarding 2012 SONGS-related Expenses and Expenditures, I.12-10-013, pages 79-80, Mailed November 19, 2013. The decision found that replacement power should include "the cost to replace lost, potential generation as well as lost revenues from potential sales. SCE's argument that foregone sales should not be considered has no merit. As proposed by the utilities in this proceeding, the only distinction between a Megawatt hour (MWh) of energy to be

• Authorize a fixed credit to ratepayers to reflect the original nuclear fuel book value of $592 million ($477 million for SCE, $115 million for SDG&E).[36] Alternatively, the Commission could authorize a credit to reflect to current book value of saleable fuel. This credit is justified because the settling parties reasonably assumed that the sale of fuel would begin promptly yet no sales have occurred more than three years after the settlement was submitted for approval. Moreover, the amount of fuel that is currently deemed saleable appears to be significantly less than originally represented to the settling parties and the Commission. The failure of SCE to aggressively move to sell this fuel, and the failure to adequately disclose the inability to sell a portion of the inventory, raises the issue of whether the mechanism in the settlement remains reasonable.

• Disallow the recovery of $54.4 million in nuclear fuel contract cancelation costs on the basis that the payments made by SCE are the direct result of imprudent management of the Steam Generator project.[37] Had the RSGs not failed, these contracts would have remained in force and the resulting nuclear fuel purchases would have provided value to ratepayers when used to generate electricity at SONGS. Instead, these contracts have become pure liabilities that merely add costs paid by customers.

• Require SCE and SDG&E to compensate customers for the failure to collect $138 million from MHI under the replacement steam generator

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replaced and a MWh whose sale is foregone is the utility's position at the relevant hour. The change in net cost to meet customer energy needs due to the lost MWh is only impacted by price at that hour. We do not see a reason to draw any distinction on cost responsibility (as opposed to cost calculation) based on the utility's position."

[36] Joint motion for adoption of the SONGS settlement, I.12-10-013, April 3, 2014, page 17.

[37] Proposals for recovery of these costs from the nuclear decommissioning trust funds are pending in A.16-03-004 (See Ex. SCE-10, page 21).

contract. As noted previously, SCE and the SONGS co-owners were found not be the prevailing party and were ordered to pay Mitsubishi's legal costs. The total costs owed to Mitsubishi are approximately $58 million. The legal fees incurred by SCE were approximately $79 million. As a result of these exorbitant legal fees, ratepayers are due to receive virtually nothing from the entire arbitration exercise. The primary winners in that process appear to be the large law firms representing the parties. Since a review of the arbitration decision reveals a series of missteps by SCE that led to the foreseeable result of failing to achieve any monetary recovery from customers, the entire value of the liability cap should be credited to ratepayers. The December 2016 ruling expressly encourages parties to consider changes to the adopted settlement that would modify the allocation of the award.[38]

- Eliminate the Greenhouse Gas research contribution and direct the $25 million shareholder contribution to be refunded to ratepayers.

The Commission should also consider additional adjustments proposed by other parties. These modifications can either be adopted at this time or may require additional briefing. TURN will respond to any other adjustments proposed by parties and stands ready to provide additional legal and factual arguments as directed by any subsequent ruling of the assigned Commissioner or Administrative Law Judge.

VI. CONCLUSION

For the reasons outlined in the preceding sections, TURN urges the Commission to reopen the proceeding, suspend any further rate collections for the SONGS

[38] Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge, December 13, 2016, I.12-10-013, page 38.

regulatory asset, and resolve the outstanding legal and factual disputes through the adoption of previously issued Phase 1 Proposed Decision and the issuance of new proposed decisions based on litigation positions offered by parties. If the Commission does not wish to proceed in this manner, it should instead consider a series of adjustments to the adopted settlement that will protect ratepayers and promote the public interest.

Respectfully submitted,

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